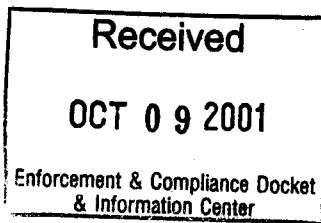


ExxonMobil Chemical Company

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EC-2000-007
IV-D-004
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Environmental and Compliance Assurance Manager
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ExxonMobil
Chemical

September 28, 2001

Comments: ICR No. 2002.02

By AIRBORNE

Joseph Retzer
Director, Collection Services Division
U.S. Environmental Protection Agency (2823)
1200 Pennsylvania Avenue NW
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Desk Officer for EPA
Office of Information and Regulatory Affairs,
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725 17th St., NW.
Washington, DC 20503

Dear Sir/Madam:

ExxonMobil Chemical Company (EMCC) appreciates the opportunity to comment on ICR No. 2002.02 issued for the Agency's proposed Cross-Media Electronic Reporting and Record-Keeping Rule (CROMERRR), that was published in 66 Federal Register 46162 (August 31, 2001).

EMCC owns and operates manufacturing and other facilities that will become immediately subject to the CROMERRR rule, upon its promulgation, because we use electronic data systems extensively to obtain and establish "records" under various Title 40 regulations and because electronic reporting is used or required for many reports by our States. Additionally, virtually all "paper" records and reports involve use of personal computers (PCs) for their generation, storage or retrieval. Handwritten records, the only records apparently not subject to this proposal, are a minimal proportion of the multitude of records we develop in meeting Title 40 requirements. Thus, this rule will not be optional for us, nor do we believe it will be optional for the bulk of industry.

Introduction

Our facilities are generally large and are subject to thousands and in some cases tens of thousands of recordkeeping and reporting requirements under Title 40. Many of these individual requirements, such as the requirements for maintaining records of continuous monitor results, involve generation of thousands of records a year (See attachment). As regulatory requirements have grown and computers have become ubiquitous, electronic data collection, recordkeeping and reporting systems have become the norm. Often the most efficient approach to satisfying the Title 40 requirements was to use existing electronic systems. In these cases, the Title 40 records represent only a small portion of the total system records. Yet, any change to the environmental recordkeeping requirements will involve changing the entire system.

While there are some dedicated systems (e.g. for fugitive emission monitoring) most systems on which environmental records are maintained are process computers, used primarily for operations control and manufacturing management. Many Title 40 records and reports are generated from this process data using general PC software (e.g. Microsoft ACCESS, EXCEL, and WORD or Lotus NOTES). At a large site, hundreds of computers and disk drives (magnetic media in CROMERRR parlance) are involved in maintaining Title 40 records.

Preliminary indications are that few if any of these systems could meet the requirements of this regulation, without major change or replacement. In many cases, new hardware and software will be needed. We anticipate the cost of changing these large systems and the associated operating risk could never be justified and so, in many cases, new, dedicated monitoring and data systems would be required to address the proposed requirements. Obviously, for no added benefit above the current base and at much higher cost, since these systems would not be incremental, as are the current systems.

If this proposal is finalized, many years and large resource commitments will be needed to review all systems involved with Title 40, determine how they can be made compliant, determine where to return to handwritten records, purchase and install new or upgraded hardware and software, retrain our workforce, and make the other changes required under this proposal. It is unclear to us how such a massive disruption of the existing US regulatory system can be justified.

Comments on Proposal and ICR claims.

The CROMERRR proposal claims that the rule will:

- reduce the cost for both sender and recipient;
- improve data quality by automating quality control functions and eliminating re-keying; and

- greatly improve the speed and ease with which the data can be accessed by all who need to use it.

Further, the summary to CROMERRR states that, "Under today's proposal, electronic document submission or electronic recordkeeping will be totally voluntary..."

None of these statements are correct. Addressing them one at a time:

- 1) This proposal will impose massive additional costs and has no cost saving potential for us or for the Agencies receiving our reports. Our records are already electronic wherever that is justified. Virtually all reports are already electronic, since they are generated on PC's. Nothing is to be gained by changing these working systems or invalidating all of the existing State electronic reporting systems.
- 2) There will be no data quality improvement, since there are no or minimal data quality problems with the existing systems and the only "rekeying" involves corrections required under the Title 40 rules. For instance, the data handling requirements of 40 CFR 60.13(h), which applies to all part 60 continuous records, requires that data collected during certain periods be removed from hourly averages. There are many similar data handling requirements throughout Title 40 that require editing of raw data. For instance, data collected during periods of start-up, shutdown or malfunction must be segregated from other data under the Part 60 and 63 rules.

In fact, in our opinion, this proposal will have a negative impact on data quality, since it will drive environmental recordkeeping away from highly reliable, backed-up systems critical to maintaining ongoing operations and profitability.

Many of the records covered by this proposal are subject to Clean Air Act (CAA) Title V and other compliance certification requirements. Under Title V, the certifying authority is already responsible for assuring the adequacy of all records on which the certification is based. Thus, at least for the portions of Title 40 resulting from the CAA there is no data quality problem.

- 3) Access to records by an inspector or for purposes of internal compliance reviews has never been identified as an issue. Where archived records are maintained offsite, as specifically allowed under many Title 40 rules, they are quickly available, again as specified in the rules, through our data networks. We do not believe there is a data availability and access problem needing correction.

4) Finally, there is nothing voluntary about this rule for our company and facilities, since virtually every record or report required under Title 40 rules is generated or maintained by electronic means already. It would be impossible to deal with the magnitude of required records otherwise. For instance, fugitive monitoring requirements alone generate thousands of records a day at our sites.

Even where records or reports are generated on paper, they are prepared on PC's that are generally connected to storage devices on a Local Area Network (LAN). This rule would apparently make every such PC installation subject to its requirements. So virtually every record or report currently generated by our company (and the rest of US industry) would appear to instantly be subject to these requirements.

CROMERRR seems to require that every time a PC or server is added to a facility or corporate network, which may occasionally be used to generate or handle environmental records (e.g. provide a portion of a TRI calculation or write a report for submittal to an Agency) or transfer monitoring data from a process computer to a LAN or PC for analysis, a major QA/QC effort will be needed. Since new PC's and servers are added almost daily somewhere in our corporate system, this burden alone is monumental. Similarly, the industry standard software we use for these activities (e.g. Microsoft WORD, ACCESS, EXCEL, and Lotus NOTES) will need to be rewritten by their owners to comply with these requirements.

According to CROMERRR, "...Similarly, EPA will only begin to allow electronic records to satisfy a specific EPA recordkeeping requirement once EPA has provided public notice stating that electronic records will satisfy the identified requirement."¹

This particular statement suggests that on promulgation of the CROMERRR rule, all existing electronic recordkeeping and reporting systems become unacceptable. Since, as explained above, virtually all of our current systems are electronic (involve a PC at a minimum), promulgation of this proposal would instantly prevent us from complying with the bulk of the Title 40 requirements.

We will comment in detail on the CROMERRR proposal by the November comment deadline, but upgrading our systems to meet these requirements or returning to handwritten systems would clearly involve massive costs not even mentioned in the proposal or the ICR and would take many years, probably at least a decade, to accomplish. We believe that this proposed rule imposes a

¹ 40 CFR Parts 3, 51, et al., Establishment of Electronic Reporting: Electronic Records; Proposed Rule, § Summary, p. 46162.

totally unrevealed and unjustified financial and resource burden for us and for the economy.

Recommendations to OMB

This proposal essentially invalidates all of the existing OMB approvals for Title 40 rules under the Paperwork Reduction Act. For instance, the current OMB approvals for the final 40 CFR Part 63 rules to which we are subject, were based on ICRs that reflected electronic reporting as we currently use it. Most Part 63 rules specifically addressed electronic recordkeeping systems. This proposal would essentially reopen each of those regulations and massively increase the burdens over those on which their OMB approval was based. Examples of some of our specific areas of concern are included as an attachment to this letter.

We request that OMB require that the current approvals for every final rule in Title 40 be reopened to allow us to comment on this newly imposed burden and its impact on that rule. This will allow impacted industries to focus on the conflicts between CROMERRR and the basis for and the requirements of each rule, impacts of CROMERRR on compliance and the compliance time needed.

Alternately, OMB should require that the ICR for the CROMERRR rule review every record requirement in Title 40, estimate how many sources are subject to that recordkeeping requirement, estimate the portion that already use electronic systems to comply (in our experience the majority of compliance systems are electronic), and estimate the cost and resource requirements associated with revising every one of those current compliance systems or the burdens associated with replacing them with paper or new electronic systems. Under the Paperwork Reduction Act and the Administrative Procedures Act, we must then be given an opportunity to comment on that revised ICR. The current ICR does not provide us the opportunity guaranteed under those laws, since it does not reflect the impacts of the proposal.

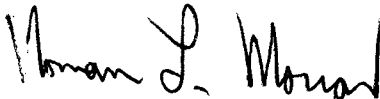
Since, as we discussed above, this rule is not voluntary, the EPA basis for failing to do a full Regulatory Flexibility Act analysis is invalid. OMB should require the Agency to perform the required analysis under that statute and publish the results for public input.

Additionally, since this proposal will invalidate virtually all existing state, local and tribal reporting systems, until they are revised and approved by EPA, and will easily incur costs exceeding the \$100M/ year trigger, this proposal requires a full analysis under the Unfunded Mandates Act and analysis under Executive Order 13132 on Federalism, including a section 6 analysis.

Finally, the information in the proposal and the ICR, does not provide OMB the opportunity to carry out the requirements of Executive Order 12866. That order requires OMB review of "significant regulatory actions," identified as a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety or State, local or Tribal governments or communities. This proposal will easily meet all of those tests.

If you have any questions, please contact me at (281) 870-6112.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman L. Morrow". The signature is written in a cursive, flowing style.

Norman L. Morrow

ATTACHMENT

Examples of Specific Concerns

A few of the larger recordkeeping and reporting systems proposed to be instantly deemed unacceptable under this proposal are discussed below. None of the costs or practicalities associated with this drastic action are reflected in the ICR or proposal preamble.

1. Process Data Records

We are required to continuously monitor process, control and treatment device operations under a variety of CAA, CWA and other Title 40 regulations. Typically, these requirements involve monitoring pH, temperatures, pressures or flows, but some involve continuous emission monitoring. Records are usually required of the raw readings, adjusted readings (as specified by the rules), and averages of various kinds. A raw data record is often generated every minute by such systems. Thus, one continuous monitoring record requirement will generate between 24 (hourly averages) and 1440 (one-minute data) records per day. Additional records related to QA/QC of the system, operating status of the monitors and the equipment and the like add to the volume of records mandated by regulations in Title 40.

To accommodate these demands, we use industry standard process computer systems, involving multiple computers, data networks and back-up systems. It is not unusual for each data record to flow through more than four computer processors and hard drive systems. We have dozens of systems like this throughout our operations and nearly all handle some environmentally mandated records. In order to develop required averages and reports from continuous monitor data, the raw data is typically transferred to mainframe and/or PC systems, again involving multiple storage devices, to perform the required operations. The calculated averages are then stored per existing rule requirements. Finally, portions of the raw data and the derivative records are transferred to spreadsheets, databases and word processors running on PC's for inclusion in required reports. Thus, handling process data as required under the Title 40 regulations involves thousands of data records daily just for our company and a great many computers and data storage systems.

Reprogramming these industry standard systems and revising basic PC and server software to meet the requirements of this proposal will be very costly, if possible at all, take considerable time and effort and provides no benefits.

2. Equipment Monitoring Records

The Title 40 rules are replete with inspection requirements of various kinds. The most extensive are the equipment leak monitoring requirements of the CAA regulations and RCRA. Under the equipment leak monitoring provisions for federally enforceable State programs and Part 60, 61 and 63 of Title 40, we perform thousands of leak determinations every day. One of our sites has several hundred thousand equipment components subject to monitoring requirements.

In order to comply, we used dataloggers (hand held computers) to record emission readings as the measurements are made in the field. Typically, at the end of the day the collected data is downloaded from the datalogger to a PC. The data is reviewed for action items and follow-up, a report generated and then it is transferred to large data systems for archiving. These thousands of records typically will pass through several computer and storage systems prior to final archiving and there are many such systems in use throughout our operations.

In addition to the equipment leak provisions of the CAA, similar, albeit smaller record generation requirements are derived from other CAA regulations and from requirements promulgated in Title 40 under the CWA and RCRA.

3. Document Records

Under Title 40, a vast number of documents are required to be maintained. For instance, engineering design drawings and records, tank and container inspection and content records, copies of procedures and performance test records are specified to be kept for periods from a few years to indefinitely under CAA, CWA, and RCRA regulations. In our company, many of these records are maintained through document management computer systems to assure they are ready availability when needed. Identifying which of these documents are subject to this proposal, reprogramming or replacing the computers to meet the requirements of this proposal will be costly and take many years. We do not see how such a requirement can be justified.

4. Records and Reports Generated on Personal Computers

Under CAA, CWA, RCRA, TSCA and other Title 40 regulations, many reports and calculations are required. In our company these are typically performed using standard software on PCs linked to a local area network (LAN). Storage of these documents will typically be on the PC hard drive and on a LAN storage device. Hard copy printouts are sometimes used to archive the final report. When a report is required the data package is transmitted to a printer spooler on the LAN and then to the storage device built into the printer. Under the CROMERRR proposal, it would appear that all of this equipment will need to be

revised. Even the printer storage device would appear to be outlawed under this proposal, until EPA publishes a notice in the Federal Register that it is an approved system.